

Further Comments from Robin Moira White

(Witness on 21 June 2022)

The following areas for which I was asked to prepare were not reached through pressure on time.

What is your response to concerns that there might be wider implications of reforming the GRC process, for example, in relation to increasing young women's participation and representation in public life (e.g. on all-women short lists, on public boards, or in sport).

1. These are all Equality Act matters and so not impacted by GRA reform.
2. Equality, diversity and inclusion is a GENERAL good – participation in public life on your relevant characteristics generally better – shortlists. ALL women, including trans women, have different life experiences to bring.
3. Sport – access is regulated by the Equality Act provisions which permit competitor safety / fair competition as legitimate considerations. These need to be objectively science led.

The EHRC referred to the “evolving jurisprudence” around sex and gender. What is your view on how this impacts on reforming legal gender recognition?

4. It doesn't, except in exceptional circumstances.
5. Discrimination protections based on Equality Act – already have self-ID there. The GRA is separate.

Your concerns surrounding the EHRC's guidance on the operation of single sex spaces and services, and how you think the guidance differs to the Statutory Code of Practice on Services, Public Functions and Associations?

6. The Committee have my 'train wreck' paper.
7. Some *very odd* things indeed have been happening at the London EHRC under the leadership of Kishwer Faulkner as you heard from Barbara Bolton of the Scottish EHRC. Three particular points to make:

First Point

8. The London EHRC appears to be attempting to make legislation backwards.
9. There is a hierarchy – From the top down:
Act,
Statutory Code,
Non Statutory Guidance.
10. What the London EHRC has done is to publish non-statutory guidance inconsistent with the Statutory Code.
11. My paper 'Train Wreck' deals with the new 'guidance' at length but one example is provision of separate services for trans people – Proportionate means of legitimate aim. Stat Code says 'strong evidence' to deal with trans people separately from gender-affirmed group and 'exceptional' evidence to exclude. This has been left out of new 'guidance'.

Second Point

12. The new 'guidance' is inherently unlawful – to be lawful the service provider must follow the least discriminatory way of achieving their (legitimate) aim. The toilet in community centre example reaches point where trans people are excluded based on biology because a potentially small number of folk object /

want greater privacy and solution proposed is gender neutral toilet for excluded people.

13. But ***the least discriminatory route*** would be for the gender-neutral toilet to be available for anyone (trans or not) who requires more privacy.

Third Point

14. No thought on how 'biological sex' should be tested / policed. Everyone to carry their birth certificate at all times? Genital inspections?

15. Law (and guidance on law) should be practical.

What is your opinion of the term 'sex' in the Equality Act, for example, is it 'biological' or 'legal'?

16. Plainly legal - why do I say that?

17. The word 'biological' appears no-where in the Equality Act.

18. Nor is there any mention of birth certificates

19. There are a couple of passing mentions of GRA (In force for 6 years when the Equality Act was passed into law) in relation to peripheral issues but not in definition of sex.

20. The often-quoted s212 definitions 'Woman' is a female of any age' and 'Man is a male of any age' are there because the Act deals with schools and young people). This is about 'girls are women' and 'boys are men' Nothing more.

21. Two Scottish cases:

'Public Boards case' says sex means 'biological sex' with no analysis.

'Census case' – takes a thoughtful look at what 'male and female' now mean

22. Killer is s7 of the EqA, the definition of gender reassignment. This refers to

'physiological or ***other aspects of sex***'

Non-physiological aspects of sex include: how we dress, how we style our hair, the names and pronouns we use.

23. So clearly Equality Act 'sex' is 'legal' not biological.

24. And when cases like A v Chief Constable and MB v Sec of State (benefits case) taken into account, GRA not only route to being treated in one's affirmed sex.

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